

Message Text

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ACTION EUR-12

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E.O. 11652: N/A
TAGS: PEPR ELAB GW
SUBJECT: PRESIDENT OF FRG/THREE POWER ARBITRAL TRIBUNAL

SUMMARY. ON SEPTEMBER 26 PROFESSOR RUMPF OF THE LEGAL OFFICE, FOREIGN MINISTRY, MET WITH REPS OF US (EMBASSY LEGAL ADVISER), FRANCE AND UK EMBASSIES TO POINT OUT THAT THE TERM OF THE PRESIDENT OF THE FRG/3 POWER ARBITRAL TRIBUNAL HAS EXPIRED AND TO SUGGEST COURSE OF ACTION. ACTION REQUESTED: SEE PARA 6. END SUMMARY.

1. BACKGROUND: PROFESSOR RUMPF RECALLED THAT THE ARBITRAL TRIBUNAL IS AUTHORIZED IN ARTICLE 9 OF THE CONVENTION ON RELATIONS, 1952, SIGNED BY FRG AND THE THREE WESTERN ALLIES, THAT IT WAS INTENDED TO BE THE SETTLEMENT MECHANISM FOR CERTAIN DISPUTES ARISING OUT OF THE TERMINATION OF THE OCCUPATION, AND THAT IT WAS NEVER FULLY CONSTITUTED ACCORDING TO THE SPECIFIC TERMS OF ITS CHARTER. RATHER, THE GOVERNMENTS OF THE FOUR PARTIES DECIDED QUITE EARLY THAT DISPUTES COULD BE AMICABLE SETTLED BY NEGOTIATION. THEREFORE, RATHER THAN THE FULL COURT CONTEMPLATED IN THE CONVENTION, ONLY ONE NEUTRAL JUDGE WAS APPOINTED AS PRESIDENT OF THE TRIBUNAL IN ORDER TO DEMONSTRATE THAT THE TRIBUNAL HAD NOT BEEN ABANDONED IF IT WERE EVER TO BECOME NECESSARY TO ACTIVATE IT AS A
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SETTLEMENT MECHANISM.

2. THE FIRST PRESIDENT (VAN KLEFFENS) WAS DUTCH AND SERVED FROM 1956 UNTIL 1970. IN 1970 A SWEDE (WIKSTROEM) WAS APPOINTED AND IN 1974 EXTENDED FOR A SECOND FOUR-YEAR TERM. WIKSTROEM'S SECOND TERM EXPIRED MARCH 31, 1978 WITHOUT COMING TO ATTENTION AND WAS

ONLY RECENTLY NOTICED BY PROFESSOR RUMPF (APPARENTLY THE DM 500/MONTH RETAINER FEE HAS CONTINUED TO BE PAID AND WIKSTROEM HAS MADE NO COMPLAINT). RUMPF ADDED THAT WIKSTROEM IS ABOUT 85 YEARS OLD, APPARENTLY IN SOUND HEALTH, IS ALSO THE VICE PRESIDENT OF THE LAND DEBT COURT (RESPONSIBLE FOR YOUNG LOAN PROCEEDINGS) AND IS RUMORED TO BE INTENDING RETIREMENT FROM ALL HIS OFFICIAL DUTIES WITHIN THE NEXT YEAR (PRESUMABLY AFTER THE YOUNG LOAN PROCEEDINGS IN 1979).

3. PROFESSOR RUMPF SAYS THAT HE SEEKS ALLIED REACTION TO THIS PROBLEM BEFORE HE CALLS IT TO THE ATTENTION OF THE OTHER FRG GOVERNMENT OFFICES CONCERNED. HE ASKED THAT THE ALLIES ANSWER SEVERAL QUESTIONS AS FOLLOWS: 1) DO WE WANT TO CONTINUE THE TOKEN STAFFING OF THE ARBITRAL TRIBUNAL, AND 2) IF WE DO WANT TO CONTINUE, WHO DO WE BELIEVE SHOULD HAVE THIS POSITION?

4. PROFESSOR RUMPF SUGGESTED, ON A PERSONAL BASIS, THAT THE TRIBUNAL IS PROBABLY BEST CONTINUED AS IT IS AS A MINIMAL FULFILLMENT OF THE TREATY OBLIGATION TO HAVE AN ARBITRAL TRIBUNAL AND THAT WE CONSIDER LEAVING THE INCUMBENT IN THE POSITION UNTIL HIS HEALTH WORSENS OR UNTIL HE RETIRES.

5. RECOMMENDATION: THAT WE FOLLOW THE SUGGESTION IN UNCLASSIFIED

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PARA 4 ABOVE. BECAUSE THE POSITION HAS BEEN AND IS LIKELY TO REMAIN A MATTER OF FORM ONLY, EMBASSY FEELS THAT IT WOULD NOT BE WORTH SPENDING TIME TO SELECT A NEW PRESIDENT UNTIL SUCH TIME AS THAT ACTION BECOMES NECESSARY.

6. ACTION REQUESTED: BECAUSE ADMIN MEETINGS OF LAND DEBT COURT ARE SCHEDULED FOR OCTOBER 25 AND EMBOFFS WILL SEE WIKSTROEM AT THAT TIME, DEPARTMENT GUIDANCE REQUESTED BY OCTOBER 20.
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